

01
02
03
04
05
06
07 UNITED STATES DISTRICT COURT
08 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

09 JON KUNKEL,) Case No. C08-1438-RSM-BAT
10)
Plaintiff,)
11)
v.)
12) REPORT AND RECOMMENDATION
KING COUNTY, *et al.*,)
13)
Defendants.)
14 _____)

15 INTRODUCTION

16 Plaintiff Jon Kunkel is currently incarcerated in the King County Jail in Seattle,
17 Washington. Appearing *pro se*, he recently filed an application to proceed *in forma pauperis*
18 (“IFP”) together with a proposed civil rights complaint, pursuant to 42 U.S.C. § 1983. In his
19 complaint, plaintiff alleges that on March 18, 2008, an unidentified King County employee
20 “illegally quit claim deeded [sic] ” plaintiff’s house to an individual named Chris Ervin.
21 (Complaint at 3). Plaintiff further asserts that “King County is negligently ruining my ability
22 to defend myself,” apparently because plaintiff had been planning to use the house as a means
23 of financing his defense in a pending criminal matter. (*Id.*) Plaintiff names King County and
24 Washington State as defendants. After screening plaintiff’s proposed complaint pursuant to
25 28 U.S.C. § 1915A, the Court recommends that plaintiff’s case be DISMISSED without
26 prejudice.

01 DISCUSSION

02 Under 28 U.S.C. § 1915A, the Court “shall review, before docketing if feasible, or in
03 any event, as soon as practicable after docketing, a complaint in a civil action in which a
04 prisoner seeks redress from a governmental entity or officer or employee of a governmental
05 entity.” 28 U.S.C. § 1915A(a). If the Court finds that the complaint fails to state a claim upon
06 which relief may be granted or is frivolous, the Court must dismiss the complaint. *See* 28
07 U.S.C. § 1915A(b).

08 Plaintiff brings this lawsuit under 42 U.S.C. § 1983. In order to bring such an action,
09 plaintiff must establish that defendants are “persons” acting “under color of state law,” and
10 that defendants deprived plaintiffs of a right or privilege secured by the Constitution or the
11 laws of the United States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981). In addition, section
12 1983 liability may not be premised upon negligence, but requires an intentional act. *See, e.g.,*
13 *Daniels v. Williams*, 474 U.S. 327, 328 (1986) (holding that a negligent act of an official
14 causing loss of property does not implicate the Due Process Clause).

15 Plaintiff’s complaint fails to state a cognizable claim under § 1983. First, he has not
16 named proper defendants. A state, such as Washington, is not a “person” for purposes of §
17 1983. *See Arizonans for Official English v. Arizona*, 117 S. Ct. 1055, 1069 (1997); *Hale v.*
18 *Arizona*, 993 F.2d 1387, 1398 (9th Cir. 1993) (en banc). A county, such as King County, may
19 be sued under § 1983 but only if plaintiff alleges that he was harmed as a result of a “custom
20 or policy” of the county. *See Board of County Comm’rs v. Brown*, 117 S. Ct. 1382, 1388
21 (1997); *Ortez v. Washington County*, 88 F.3d 804, 811 (9th Cir. 1996). Here, plaintiff does not
22 allege that he was harmed as a result of a custom or policy of King County. Rather, plaintiff
23 alleges that he was harmed as a result of a negligent act by King County. Therefore, plaintiff
24 has failed to state a claim against either of the two named defendants.

25 In addition, even if plaintiff were granted leave to amend his complaint to name a
26 proper defendant, such as the King County employee who allegedly performed the illegal act

01 of processing the deed to plaintiff's house, the lawsuit here could not proceed. As mentioned
02 previously, section 1983 liability may not be premised upon negligence, but requires an
03 intentional act. 474 U.S. at 328. In addition, an allegation of loss of property does not
04 constitute a constitutional claim if the State has provided an adequate post-deprivation
05 remedy. *See Zinerman v. Burch*, 494 U.S. 113, 129 (1990). It appears that Washington State
06 provides such remedy through the Washington Tort Claims Act, which states that "[t]he state
07 of Washington, whether acting in its governmental or proprietary capacity, shall be liable for
08 damages arising out of its tortious conduct to the same extent as if it were a private person or
09 corporation." RCWA § 4.92.090; *see Paulson v. Pierce County*, 99 Wash. 2d 645, 664 P.2d
10 1202 (1983) (holding that this statutory waiver of sovereign immunity applies to political
11 subdivisions of the state, such as counties). Accordingly, the complaint here fails to state a
12 claim upon which relief under § 1983 may be granted.

13 CONCLUSION

14 For the foregoing reasons, the present § 1983 complaint may not proceed, and the
15 Court recommends that it be DISMISSED without prejudice.¹ Consequently, plaintiff's IFP
16 application may be DENIED as moot. A proposed Order accompanies this Report and
17 Recommendation.

18 DATED this 31st day of October, 2008.

19
20 
21 BRIAN A. TSUCHIDA
22 United States Magistrate Judge
23

24 ¹ Because it is clear that any attempt by plaintiff to amend his complaint to cure the
25 above-described deficiencies would be futile, the Court need not provide plaintiff with an
26 opportunity to amend prior to dismissal. *See Flowers v. First Hawaiian Bank*, 295 F.3d 966, 976
(9th Cir. 2002); *Lucas v. Department of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995) (per
curiam).